Policy of appointment of judges in Supreme Court and High Courts

*423. SHRI GAYA SINGH:†
SHRI JALALUDIN ANSARI:

Will the Minister of LAW AND JUSTICE be pleased to state:

(a) the present policy of appointment of judges in Supreme Court and High Courts and the guidelines issued in this connection;

(b) since when this policy is enforced and how many judges were appointed in Supreme Court and High Courts, since then;

(c) whether there is any scope for recommendation or use of discretionary power in the appointments by any source of power, if so, the details thereof;

(d) whether Government are aware of the fact that many judges of High Courts and Supreme Court are related to each other; and

(e) if so, how many such judges are there and the reasons therefor?

THE MINISTER OF STATE OF THE MINISTRY OF LAW AND JUSTICE (SHRI RAMAKANT D. KHALAP): (a) to (c) The appointments of Judges of the Supreme Court and the High Courts are made in accordance with Articles 124 and 217 of the Constitution of India respectively. Following the majority judgement of a 9 member bench of the Supreme Court on 6.10.1993, the Memorandum of Procedure for appointment of judges has been revised. According to the revised procedure, the proposals for appointment of a judge in the High Courts should be initiated by the Chief Justice of the concerned High Court. In respect of appointment of judges in Supreme Court and Chief Justices of High Courts and transfer of Chief Justices and judges of High Courts, the proposals are to be initiated by Chief Justice of India. Prior to 1993 judgement, proposals could be initiated by Government also.

(d) and (e) No such information is maintained.

श्री गया सिंह: सभापति महोदय, जो मंत्री जी ने जवाब दिया है मैं इससे संतुष्ट नहीं हूं। मैं आपके माध्यम से यह जानना चाहता हूं कि 1992 से अभी तक एस०सी०, एस०टी०, ओ०बी०सी०, माइनारिटी और महिलाओं में से कितने जजों की नियुक्ति हुई है? और (बी) ऐसे कितने उच्चतम और उच्च न्यायालय के जज हैं जिनके जूनियर या उनकी फेमिली के मेम्बर्स की जजेज में बहाली की गयी है और इसी के साथ मैं यह भी कहना चाहता हूं कि पिछले कुछ सालों मे देश में उच्च न्यायालय और उच्चतम न्यायालय से लगभग 50 से ज्यादा जजों का ट्रांसफर हुआ—उन्हीं स्थानों में जहां उनके लड़के या लड़की प्रेक्टिस कर रहे हैं। क्या इस संबंध में मंत्री जी के पास कोई रिपोर्ट है या इसकी जांच कराएंगे और जांच कराकर हाउस को देंगे?

SHRI RAMAKANT D. KHALAP: Sir, the Constitution does not prevent the appointment of any person who happens to be a relative of a sitting Judge as a Judge of the Supreme Court or a High Court. If a candidate is qualified and if, as per the memorandum of procedure adopted, the Chief Justice, in the case of High Courts, or the Chief Justice of India, in the case of the Supreme Court, finds such a person suitable, a recommendation comes to the Government, and that recommendation, as you all know, by virtue of the judgement which I have quoted here, is accepted by the Government. It is almost binding on the Government, and such appointments are made.

As regards the second aspect which he has mentioned, about Scheduled Castes, Scheduled Tribes and women members, there also the Constitution does not say that any categorisation has to be followed or that any reservation has to be maintained for appointing members belonging to Scheduled Castes, Scheduled Tribes or women to the posts

†The Question has actually asked on the floor of the House by Shri Gaya Singh.

of Judges. However, the Government has been writing to all the Chief Justices—In fact, I have done this; I have requested the Chief Justices of the various High Courts, and I have also reminded them by letters—that, as far as possible, they should try and select suitable, qualified candidates—on merit—belonging to Scheduled Castes and Scheduled Tribes and even women candidates so that such people can become Judges...*(Interruptions)*...

श्रीमती रेणुका चौधरी: इन्होंने पार्लियामेंट में नहीं बनाया वहां क्या रिकमेंडेशन देंगे।

We haven't been able to achieve it here.

SHRI TRILOKI NATH CHATURVEDI: And he says "even women". Such a condescending attitude!...*(Interruptions)*...

SHRI RAMAKANT D. KHALAP: I will repeat. I have said in my letters that members belonging to minorities, backward classes, Scheduled Castes, Scheduled Tribes, and women be selected on merit and proposed/recommended for appointment as Judges.

SHRI V. NARAYANASAMY: Is it not intervention in their judicial functions?

MR. CHAIRMAN: Please do not interrupt. Let him answer.

SHRI RAMAKANT D. KHALAP: Sir, the third aspect relates to sons, daughters and relatives of Judges practising in the various High Courts. There may be such cases where sons, daughters and relatives are there. They are not prevented from practising and carrying on their own profession.

SHRIMATI JAYANTHI NATARAJAN: They should be.

SHRI RAMAKANT D. KHALAP: How can you prevent them? ..*(Interruptions)*.. They are carrying on. In their own right they are lawyers.

SHRI TRILOKI NATH CHATURVEDI: Bar Associations have been repeatedly representing to you. And the Bar Associations have even boycotted...*(Interruptions)*...

MR. CHAIRMAN: Please. Let the Minister answer. There are so many supplementaries...*(Interruptions)*...

SHRI RAMAKANT D. KHALAP: Sir, the Ministry does not maintain details of such relationships.

SHRI TRILOKI NATH CHATURVEDI: You do. ..*(Interruptions)*..

SHRI RAMAKANT D. KHALAP: We do not maintain because such a need has not arisen.

SHRI TRILOKI NATH CHATURVEDI: I am afraid you do. You may not divulge it. ..*(Interruptions)*..

MR. CHAIRMAN: Please don't interrupt. Put your second supplementary, please. Make it brief.

श्री गया सिंह: सभापति महोदया, मैं आपके माध्यम से मंत्री जी से जानना चाहता हूं कि क्या जज के एप्वायंटमेंट में उनके एसेट्स के बारे में भी जानकारी ली जाती है और क्या कुछ सालों में उच्च और उच्चतम न्यायालय के जजों के और उनके रिलेशंस की जो अपार संपत्ति बढ़ रही है उसके संबंध में सरकार को कोई ज्ञान है और यदि है तो उस संबंध में भी कोई कार्यवाही करने के लिए सोच रही है?

श्री रामकांत डी० खलप: सर, मेमोरैंडम ऑफ प्रोसीजर जो तय हुआ है इसके अंदर कोई प्रावधान नहीं है। जजेज़ के एसेटस के बारे में या जो नए जजेज़ एप्वायंट होते हैं इनके बारे में उनके एसेट्स के बारे में जांच देने का कोई प्रावधान इसमें नहीं है।

Let me tell you about the procedure. There is a procedure. There is a form. The information that is obtained is about the extent of practice and the income of the candidate. That is assessed. If it is below a particular amount, generally such persons are not recommended. What is expected is that the person who is sought to be appointed has sufficient practice and sufficient experience. For that purpose, this aspect is taken into consideration.

About what assets he owns later on, the Government does not maintain any record for that purpose. ...*(Interruptions)*

MR. CHAIRMAN: Please do not interrupt. Let us have an orderly discussion. I will call everybody if you do not interrupt.

श्री जलालुदीन अंसारी: सभापति महोदय, मैं आपके माध्यम से माननीय मंत्री जी से यह जानना चाहता हूं कि सुप्रीम कोर्ट और हाई कोर्ट के जजेज़ के लिए प्रतिमाह कितने केसेज़ के निष्पादन करने का कोटा तय है? अगर कोटा तय है तो उसकी संख्या क्या है यह मैं उनसे जानना चाहूंगा? क्या इस तरह का कोई कोटा निर्धारित है कि प्रतिमाह सुप्रीम कोर्ट और हाई कोर्ट के जजेज़ उस निश्चित कोटे के अनुसार केस का डिसपोज़ल करेंगे और अगर कोटे हैं तो उस कोटे के अनुसार प्रतिमाह वह कितने केसेज़ को निष्पादित कर पाते हैं क्या इसकी जानकारी सदन को माननीय मंत्री जी देने की कृपा करेंगे? दूसरा सवाल इसी में "ख" है कि सुप्रीम कोर्ट और हाई कोर्ट के अनेक जज ऐसे हैं जो एक दूसरे के रिश्तेदार हैं और अगर यह बात सही है तो मैं जानना चाहूंगा कि वैसे जजेज़ की संख्या कितनी है। माननीय मंत्री जी बताने की कोशिश करेंगे? इस सवाल पर माननीय मंत्री जी क्या कोई कमीशन बहाल करने की बात सोचते हैं और अगर सोचते हैं तो सदन में इसको बताएं? "ग" इसी में मेरा है सभापति महोदय जी, माननीय मंत्री जी से कि...**(व्यवधान)**

श्री एस० एस० अहलुवालिया: जवाब चाहिये या नहीं?

MR. CHAIRMAN: Please conclude.

श्री जलालुदीन अंसारी: ठीक है।

SHRI RAMAKANT D. KHALAP: Sir, the Judges are expected to dispose of a certain number of cases every month. By and large, this aspect has been observed by the Judges. I must also say that in some of the High Courts the rate of disposal is quite good. In the Supreme Court in particular, the number of cases that have been disposed of in the last three years is quite appreciable. The pendency has come down almost to the level of the number of cases filed in a year. We have hardly 25,000 cases in the Supreme Court today. In some High Courts, of course, the position is not as good as it should have been. But, the Chief Justice of the Supreme Court and other High Court Judges have been meeting regularly and have been devising methods for speedy disposal of cases. In fact, the Courts have now been computerised. They have worked out a methodlogy of disposing of cases. Cases of one nature are being grouped together and then decided. These are the things that are being done in the courts.

जहां तक रिश्तेदारी का सवाल है इसके बारे में तो मैं पहले कह चुका हूं कि हमारे पास इसकी कोई जानकारी नहीं है।...**(व्यवधान)**

SHRIMATI JAYANTHI NATARAJAN: You give the details.

श्री रमाकांत डी० खलप: इस तरह का सवाल आप पहली बार उठा रहे हैं, हमारे पास इसकी कोई जानकारी नहीं है।

SHRI HANSRAJ BHARDWAJ: Sir, I would like to give a piece of information to the House. At the time of appointment, so far as I remember, we do obtain a list of assets of every Judge in the High Court, but not in the Supreme Court, because it is a continuity from the High Court to the Supreme Court. There is a prescribed proforma where, in addition to the practice of the proposed appointee, his other assets are also obtained.

The question which I want to specifically ask the hon. Minister is this. In 1993, the Supreme Court had said that if there is a unanimity between the three judges, that would be almost binding on the Government. The hon. Minister made certain announcements that he would get the Constitution amended to say that 'consultation' does not mean 'concurrence'. That was one point which the hon. Minister did highlight in his public utterances also. May I know from the hon. Minister as to what is the view of the Government is with regard to the review of the nine-judges' judgment. I would like to know whether they still want to have a review of the nine-judges'

judgement or whether the memorandum procedure drawn up in 1994 holds good today.

SHRI RAMAKANT D. KHALAP: As you all know, the 6th October 1993, the nine-Member Bench judgement has given a different meaning to the word 'consultation'. This word has been construed to mean 'concurrence'. Therefore, a lot of debate has started in the whole country. The Government, under the leadership of our previous Prime Minister, Shri Deve Gowda, also considered the issue and then we framed a Bill. That Bill was submitted to the Secretariat of the Lok Sabha. It was not taken up for consideration. Some discussions were held with different sections of society. However, I would now say that the present Government would like to discuss this issue with leaders of all political parties represented in both the Houses and then come out with a Bill to amend the Constitution in the light of the consensus that emerges out of that discussion.

SHRIMATI JAYANTHI NATARAJAN: Sir, I would like to ask the hon. Minister whether his Government is thinking seriously on the proposal to have a judicial commission. I am not asking this question just about the procedure of appointment. I am asking this in view of the latest judgement of the Supreme Court giving power to itself to review the impeachment of judges. Sir, under the Constitution, the Parliament can impeach judges and there is an impeachment process laid down in the Constitution. Even that has been more or less negatived by the Supreme Court, which has held in one case that the Court has the power of judicial review after the Parliament has passed the impeachment decree in Parliament. In view of that, judges are now totally separate. Their appointments are controlled by the judges themselves. That is fine. They cannot be transferred. Even under the law of contempt they cannot be criticised. Because of the wide hand of the law of contempt, anybody criticising or saying something about a judgement can be taken to jail. Contempt does not lie only in disobeying a court order. So, they can punish for contempt. Even on the power of impeachment, which the Constitution has given to Parliament, the Court has said it has the power of reviewing. Therefore, the judges are entirely separate by themselves. I would like to know whether the Government will think of a judicial commission to go into all these details to restore the perspective to the Constitution.

SHRI RAMAKANT D. KHALAP: We have not decided whether there should be a Judicial Commission or whether we should revert back to the position as was prevailing prior to 6th October, 1993. ....*(Interruption)*.

SHRI SATISH AGARWAL: That is different. She is on a different point.

SHRI RAMAKANT D. KHALAP: She is on this point also. She has asked about ....*(Interruption)*.

SHRI V. NARAYANASAMY: It is an important question. A half-an-hour discussion may be allowed.

MR. CHAIRMAN: Give notice. Now Question Hour is over.

SHRI SOM PAL: Let there be a short-duration discussion on these issues of appointment, promotion and transfer. *(Interruption)*. It is a very important issue. *(Interruptions)*.

MR. CHAIRMAN: Question Hour is over. Papers to be Laid on the Table.